

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 04-33521-WRS

Chapter 7

RALPH CARROLL JORDAN,

Debtor

MEMORANDUM DECISION

This Chapter 7 bankruptcy case came before the Court for hearing on the Bankruptcy Administrator's Motion to Dismiss (Doc. 26) on August 2, 2005. The Bankruptcy Administrator was present by counsel Michael A. Fritz, Sr. The Debtor was present by counsel Glenda W. Hughes, but he did not appear in person or offer testimony by deposition or otherwise.

This case was filed on December 9, 2004. The Bankruptcy Administrator offered evidence indicating that the Debtor had disposable monthly income in the amount of \$1,102.28. The Bankruptcy Administrator contends that the Debtor could file a case under Chapter 13 and pay 100% of his unsecured debts. The Debtor did not offer any evidence to rebut the Bankruptcy Administrator's claims.

The Bankruptcy Administrator seeks dismissal pursuant to 11 U.S.C. § 707(b),¹ citing Stuart v. Koch (In re: Koch), 109 F.3d 1285 (8th Cir. 1997); and U.S. Trustee v. Harris, 960 F.3d 74 (8th Cir. 1992). The Court has undertaken its own research and is unable to find any binding precedent. Without undertaking an exhaustive analysis of the Eighth Circuit case law cited by the Bankruptcy Administrator, and noting that these cases have been criticized by Bankruptcy Courts within the Eleventh Circuit, the Court does not necessarily adopt the view of the Eighth

¹ As this case was filed before October 17, 2005, the amendments to the Bankruptcy Code made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109-8) do not apply.

Circuit. Moreover, § 707 of the Bankruptcy Code was substantially amended for cases filed after October 17, 2005. For purposes of deciding this case, the Court finds that the Bankruptcy Administrator has made a sufficient showing of substantial abuse and that the Debtor has not rebutted the Bankruptcy Administrator's case. For this reason, the Bankruptcy Administrator's motion is GRANTED. The Court will enter an order of dismissal by way of a separate document.

Done this 16th day of December, 2005.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Glenda W. Hughes, Attorney for Debtor
Teresa R. Jacobs, Bankruptcy Administrator
Robert D. Reynolds, Trustee